

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A**

IN RE: GENE E. MCKISSIC
ARKANSAS BAR ID NO. 76075
CPC DOCKET NO. 2008-068

FILED

MAY 15 2009

CONSENT FINDINGS AND ORDER

**LESLIE W. STEEN
CLERK**

The formal charges of misconduct upon which this Findings and Order is based arose from information the Committee obtained from files maintained by the Arkansas Supreme Court Clerk. The information related to the representation of Milton Huskey; the Unknown Heirs of Milton Huskey; and Any Unknown Person Claiming an Interest in Lots 21 and 22, Block 8, White's Addition to the Town of McGehee, Arkansas, by Gene E. McKissic, Attorney at Law, Pine Bluff, Arkansas.

Mr. McKissic represented Milton Huskey, et. al, in an eminent domain proceeding brought by the City of McGehee, Arkansas, and filed in Desha County Circuit Court. On July 25, 2007, Judgment was entered in favor of the City of McGehee. On August 20, 2007, Mr. McKissic filed a timely notice of appeal. Pursuant to Rule 5(a) of the Rules of Appellate Procedure—Civil, the record in the matter was due to be filed within ninety (90) days from the filing of the first notice of appeal, unless the time is extended by order of the circuit court as provided under Rule 5. As the notice of appeal was filed on August 20, 2007, the record was due to be filed on or before November 19, 2007.

On November 15, 2007, a Motion for Extension of Time to File Transcript was filed by Mr. McKissic. In the motion, Mr. McKissic stated that he had been informed by the Court Reporter that the transcript was incomplete. According to Mr. McKissic, the Court Reporter advised that if a

motion for extension of time and order were faxed to the judge's office, the court would sign the order immediately and the order would be filed immediately thereafter. Mr. McKissic faxed a copy of the motion and order to the court on November 15, 2007 and filed a hard copy with the clerk. In his motion, Mr. McKissic asked that the time for filing the record be extended the maximum seven months as provided in Rule 5(b) of the Rules of Appellate Procedure–Civil. The order was signed by the Judge on November 20, 2007, and filed on November 26, 2007. As the Order was not entered prior to the expiration of the ninety (90) days following the filing of the notice of appeal requirement, the Arkansas Supreme Court Clerk notified Mr. McKissic that he needed to file a Motion for Rule on the Clerk.

Mr. McKissic acknowledged in his response to the formal complaint that the Order to Extend Time was not timely entered but denied that he disobeyed an obligation under the rules of a tribunal or that he engaged in conduct that is prejudicial to the administration of justice. Mr. McKissic stated that when he was notified that the Motion for Rule on the Clerk was denied, he notified his client with a full written explanation and copies of all documents.

Mr. McKissic approached the Office of Professional Conduct and undertook good faith discussion of a discipline by consent proposal. Mr. McKissic conditionally acknowledged violation of Rules 3.4(c) and 8.4(d) of the Arkansas Rules of Professional Conduct in exchange for the disciplinary sanction of Caution and assessment of Fifty (\$50) Dollars in administrative costs.

Upon consideration of the formal complaint and attached exhibit materials, the consent proposal, and the Arkansas Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. Gene E. McKissic violated Rule 3.4(c) when he failed to obtain a timely Order for

Extension of Time to File Record as required by Rule 5 of the Rules of Appellate Procedure—Civil. Rule 3.4(c) requires that a lawyer not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

2. Gene E. McKissic violated Rule 8.4(d) when his failure to obtain a timely filed Order for Extension of Time to File Record in compliance with the provisions of Rule 5 of the Rules of Appellate Procedure—Civil, resulted in the record on appeal not being timely filed and his clients being denied the opportunity for appellate review of the decision of the Desha County Circuit Court. Rule 8.4(d) requires that a lawyer not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that GENE E. MCKISSIC, Arkansas Bar ID No. 76075, be, and hereby is, CAUTIONED and assessed costs in the amount of FIFTY DOLLARS (\$50.00) for his conduct in this matter. The costs assessed herein shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct within thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

IT IS SO ORDERED.

ARKANSAS SUPREME COURT COMMITTEE ON
PROFESSIONAL CONDUCT - PANEL A

By: Steven Shults
Steven Shults, Chairman, Panel A

Date: May 15, 2009